
DIVISION 4. PROCEDURES

SECTIONS:

- 5.4.1 GENERAL LEGISLATIVE PROCEDURES**
5.4.2 PLANNING COMMISSION LEGISLATIVE PROCEDURE
5.4.3 ZONING EXAMINER LEGISLATIVE PROCEDURE
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- 5.4.1 GENERAL LEGISLATIVE PROCEDURES.** Legislative approvals are considered and decided by the Mayor and Council. All applications are subject to the general application procedures in this section. All applications are then subject to citizen review through one of two public comment, public hearing and public review procedures. Plan and text amendments, including amendments to the General Plan, specific plans, redevelopment plans and to the *LUC* are reviewed by the Planning Commission in accordance with Sec. 5.4.3. All applications to designate or change zoning regulations for specific property are reviewed by the Zoning Examiner in accordance with Sec. 5.4.3. These include changes in zoning classifications through rezoning, Planned Area Developments and approval of Mayor and Council Special Exception uses. Designation of property as subject to an overlay zone may occur when the overlay zone is first added as a text amendment in accordance with Sec. 5.4.3 or as a change of zoning in accordance with Sec. 5.4.3.
- 5.4.1.1. Pre-application conference. A pre-application conference is required for all applications by parties other than the City. Depending upon the level of detail of the information provided for the proposed project by the potential applicant or the need to include other City departments in the preliminary discussions, additional pre-submittal conference(s) may be requested by the Development Services Department.
- 5.4.1.2 Neighborhood Meeting. The applicant shall offer to meet at a specified time and place to discuss the proposed project with the persons and entities entitled to notice of the application. The offer shall be made at least ten (10) days prior to the date of the meeting. The meeting shall occur at least fifteen (15) and not more than (60) days prior to the submittal of the application. The offer shall describe the substance of the application and advise the adjacent property owners and neighborhood association(s) that they may submit comment to the Director prior to the public hearing or speak at the public hearing. The applicant shall also provide notice of the meeting to the office of the Council Ward in which the subject site is located. The date for such meeting shall be prior to submittal of the application. Documentation of the offer to meet and a summary of the meeting shall be submitted with the application. A neighborhood meeting shall not be required for amendments to the General Plan or for text amendments to the *Land Use Code*.
- 5.4.1.3 Applications. Applications shall be in conformance with the General Plan, applicable specific plans, the *LUC*, Chapter 23, Development Compliance Code, Chapter 23A, Development Standards, the applicable fees in Development Standards, other pertinent codes and regulations and the following.
- A. Applications for the amendment to an area or neighborhood plan within two (2) years of the date of adoption of the plan shall not be processed unless Mayor and Council consent to the application.
 - B. Applications for designation of protected peaks and ridges shall be accepted only from the City or one or more property owners of the subject property.
 - C. The re-adoption of the General Plan, amendments to the *LUC*, and original city zoning shall only be initiated by the Mayor and Council. Notice of initiation shall be provided in conformance with A.R.S. §9-461.06.
 - D. Redevelopment plans shall be initiated after a resolution by the Mayor and Council declaring that an area is subject to redevelopment in accordance with state law prior to initiating a redevelopment plan.

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- 5.4.1.4 Notice. Notice as required by this section shall state the substance of the proposed specific plan amendment, amendment to the *LUC* or change of zoning, including a general description of the matter to be considered and a general description of the area affected. The notice shall advise adjacent property owners and other affected or interested persons that comments and expressions of issues and concerns regarding the application may be submitted prior to the public hearing on the application. Comments on plan amendments and amendments to the *LUC* shall be submitted to the Planning Director who shall forward the comments to the Planning Commission. Comments on change of zoning cases shall be submitted to the DSD Director, who shall forward them to the Zoning Examiner. Notice shall also be given by first class mail to all persons who have registered their names and addresses with the City for the purpose of receiving such notice and any other persons the Planning Director or DSD Director determines are affected by the application.
- 5.4.1.5 Military Airport Notice. Any change of zoning involving land that is located within the vicinity of a military airport as defined by state law shall include provision of notice by first class mail to the Davis Monthan Air Force Base. If the application involves property within the high noise or accident potential zone as defined in A.R.S. §28-8461, that fact shall be stated in the notice.
- 5.4.1.6. Suspension or Withdrawal of an Application. An applicant may suspend an application at any time prior to the date published notice is given for the public hearing before the Planning Commission or the Zoning Examiner. An application shall not be suspended for more than one (1) year after the date of acceptance of the application. An application may be withdrawn at any time.
- 5.4.1.7 Staff review and recommendation. City staff shall review each application to determine, to the extent applicable, compliance with the General Plan, specific plans, the *LUC*, Chapter 23, the Development Compliance Code, Chapter 23A, the Development Standards and any other code or regulation that may pertain to the application. Where it is determined that the application does not comply with applicable plans, codes, regulations and standards, the application may be denied by staff. If an application for a change of zoning is denied by staff for noncompliance with the General Plan or specific plans, that decision may be appealed to the Mayor and Council in conformance with Development Compliance Review, Sec. 23A-62. Where appropriate, City staff may request comments from other public and private agencies during the review process. Staff shall prepare and submit a report and recommendation to the Planning Commission or Zoning Examiner and shall make copies available to the public prior to the public hearing. The staff report in a change of zoning case shall be available to the public not less than fifteen (15) days before the public hearing.
- 5.4.2 PLANNING COMMISSION LEGISLATIVE PROCEDURE.** Applications reviewed under this procedure require consideration by the Planning Commission at a public hearing(s) for recommendation to the Mayor and Council. This procedure is used for adoption of, re-adoption of, or amendment to, the General Plan and the specific plans, such as, but not limited to, subregional, area, neighborhood plans, the Major Streets and Routes (MS&R) Plan and redevelopment plans and amendments to the *LUC*, including amendments for the creation of overlay zones.
- 5.4.2.1 Planning Commission's Public Hearing. The Planning Commission shall hold at least one (1) public hearing. For the re-adoption of or a major amendment to the General Plan, the Planning Commission shall hold at least two (2) public hearings, each in a different location within the city and shall provide additional consultation and public notice in conformance with A.R.S. §9-461.06.
- A. *Notice of Public Hearings.* Notice of public hearings shall be given at least fifteen (15) days and not more than thirty (30) days before the public hearing. Notice of the time and date of the hearing and the general subject matter shall be published at least once in a newspaper with general circulation in the City. A display ad shall be provided for amendments to the *LUC*.
- B. *Notice for Specific Plan Amendments.* Notice for proposed amendments to specific plans, including neighborhood plans, area plans and subregional plans, where the amendment changes the plan application to a limited, specific site within the plan area, shall be mailed to property owners within three hundred (300) feet of the amendment site and to neighborhood associations within one mile of the site.

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- C. *Notice for Applications of Overlay Zones to Specific Property.* Where an application provides for a text amendment to create a new overlay zone and also provides for specific application of that overlay zone to specific properties, mailed notice shall be given in accordance with Sec. 5.4.3.B.1 for the area to be designated subject to the new overlay zone.
- D. *Public Comment.* Property owners and other interested persons may submit their comments and expressions of any issues or concerns regarding an application prior to a public hearing by submitting them to the Planning Commission in care of the Planning Director. The Planning Director shall forward the comments to the Planning Commission, or submit them to the Planning Commission at the public hearing.
- E. *Planning Commission's Recommendation.* Except for redevelopment plans, the Planning Commission may close a public hearing or may decide to continue a public hearing to a future time and place provided it is closed within ninety (90) days of the date of the initial hearing. The Planning Commission shall issue a recommendation, including a statement of the reasons for the recommendation, within forty-five (45) days of the close of the hearing(s). The application, together with the Planning Commission Recommendation and the City Manager's Recommendation, is forwarded to the Mayor and Council for decision.

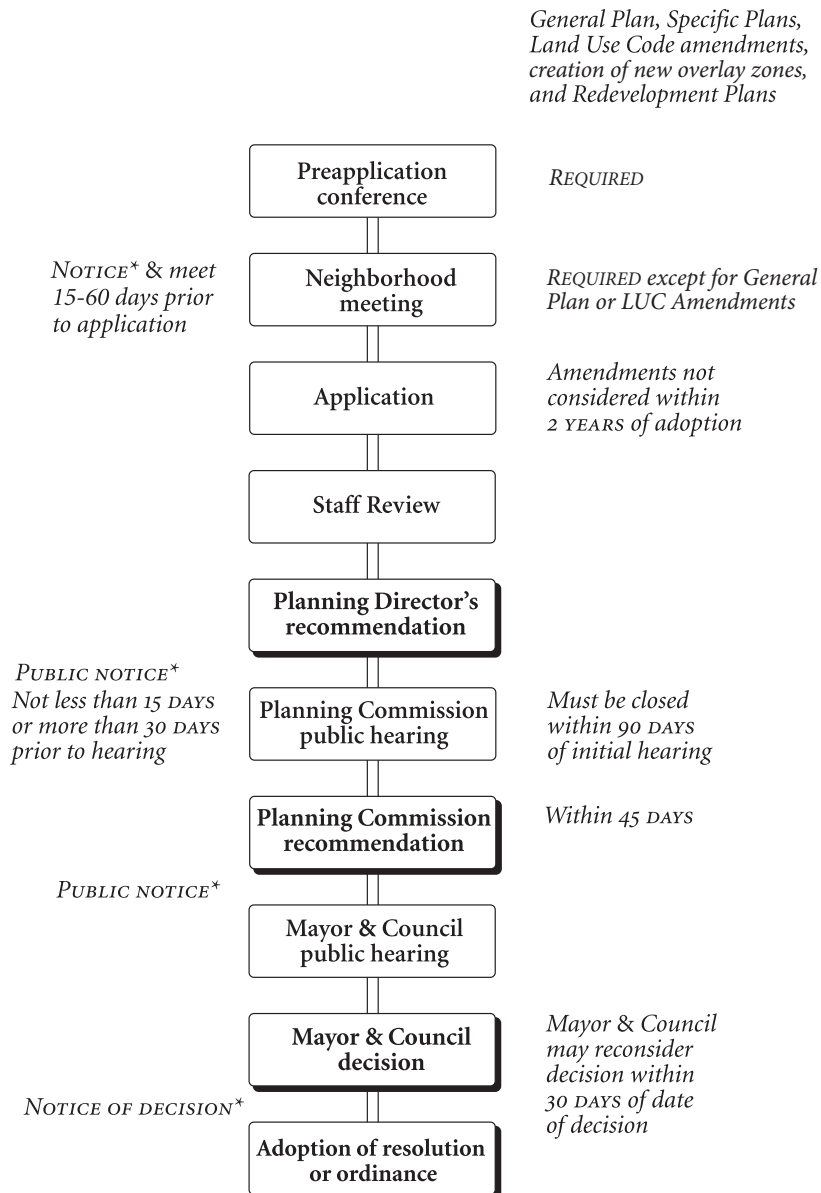
If the Planning Commission fails to issue a recommendation within the prescribed time, the application will be forwarded as a recommendation to the Mayor and Council for a decision and shall state the reasons for the positions taken by members of the Planning Commission.

- F. *Planning Commission's Recommendation for Redevelopment Plans.* For redevelopment plans, the Planning Commission reviews the plan for compliance with the General Plan and any applicable specific plans at a public meeting or a public hearing. The Planning Commission shall forward a recommendation to Mayor and Council within thirty (30) days from the date of its receipt of the plans for review. If no recommendation is forwarded within thirty (30) days, the Mayor and Council may proceed with the public hearing on the redevelopment plan.

5.4.2.2 Mayor and Council Decision. The Mayor and Council shall hold a public hearing on legislative applications prior to decision. The decision on legislative applications shall consider the application, the Planning Commission's recommendation and the City Manager's recommendation and public comments. The notice for the public hearing before the Mayor and Council shall be the same as the notice before the Planning Commission except for redevelopment plans. Adoption and re-adoption of or amendment to the General Plan shall be in conformance with A.R.S. §9-461.06 (G) and (K) and other applicable provisions. For redevelopment plans, notice shall be published once each week for two consecutive weeks, the last publication to be at least ten (10) days before the date set for the hearing.

5.4.2.3 Reconsideration. A member of the Mayor and Council may request the reconsideration of an authorization decision or decision on a proposed ordinance provided the vote to reconsider is made within thirty (30) days of the date of decision. A reconsideration will be scheduled upon a majority vote in favor of the reconsideration. If the reconsideration occurs after the time when the decision is initially made, then public notice of the reconsideration shall be given in the same manner as for the initial decision.

CITY OF TUCSON LAND USE CODE
ARTICLE V. ADMINISTRATION
DIVISION 4. PROCEDURES



SEC 5.4.2 PLANNING COMMISSION PROCEDURE

5.4.3 ZONING EXAMINER LEGISLATIVE PROCEDURE. Applications reviewed under this procedure require consideration by the Zoning Examiner at a public hearing(s) for recommendation to the Mayor and Council. This procedure is used for establishment of original city zoning for newly annexed areas and for amendments to the zoning of specific properties including changes in the zoning classifications (rezonings), Planned Area Developments, designation of properties subject to established overlay zones and Mayor and Council Special Exception land uses.

5.4.3.1 Original City Zoning. Upon the effective date of annexation of property into the City the City may adopt original City zoning or may continue the existing county zoning for a period not to exceed six (6) months. A case which establishes original City zoning may be initiated anytime after the filing, in the office of the Pima County Recorder, the blank petition for annexation of the subject property in accordance with state law.

5.4.3.2 Zoning Examiner Public Hearing. The Zoning Examiner shall hold a public hearing on applications for a change of zoning and on applications for Mayor and Council Special Exception uses on behalf of the Mayor and Council. The public hearing shall be opened within seventy (70) days of acceptance of the application, except for applications for original city zoning.

A. *Notice of the Public Hearing.*

1. Notice of public hearings shall be given at least fifteen (15) days and not more than thirty (30) days before the public hearing.
2. Mailed public notice shall be provided by first class mail to each property owner within the area of the application and within three hundred (300) feet of any lot line of the area of the application, neighborhood associations within one mile of the site and any other persons the DSD Director determines are affected by the application. The property owner shall be determined from the last assessment of the property. For a change of zoning to property that abuts other municipalities or unincorporated areas of Pima County, notice shall also be given to the planning agency of the abutting jurisdiction. Mailed notice shall also be provided to the public service agencies effected by the application.
3. Adjoining property under the same ownership as the property within the subject site and adjoining public right of way shall be included in the site in determining the boundaries from which the notice area is measured.
4. Posted Notice. No later than fifteen days prior to the public hearing, notice shall be posted that is of such size that the following are visible one hundred (100) feet from the site boundary: the word "zoning," the existing and proposed zoning, and the date and time of the hearing. At least one (1) notice shall be posted for each street the property adjoins.
5. Published Notice. Notice of the time and date of the hearing with a general explanation of the matter to be considered and a general description of the area affected shall be published at least once in a newspaper with general circulation in the City.
6. Military Airport Notice. Any change of zoning involving land that is located near a military airport shall include provision of notice by first class mail to the Davis Monthan Air Force Base as required by state law.

B. *Public Comment.* Comments and expressions of any issues or concerns regarding the application from area property owners and other interested persons may be submitted prior to the public hearing to the DSD Director, who shall forward the comments to the Zoning Examiner, or may be submitted to the Zoning Examiner at the public hearing.

C. *Conduct of the Public Hearing.* The Zoning Examiner shall have the ability to obtain information from all parties and interested persons, including public agencies, prior to the public hearing, provided all requests for information are in writing and the request and information are included as part of the public record. The Zoning Examiner shall also have the authority, after the close of the public hearing, to obtain additional information or clarify information that has been presented. Any such request shall be in writing and the request and response shall be included as part of the record or report to the Mayor and Council. The Zoning Examiner may close or continue the public hearing to a specified date, time and place provided that the continuance is not for more than thirty (30) days.

Beyond these limitations, the Zoning Examiner shall not communicate, directly or indirectly, with any party, any party's representative or any interested person in connection with any issue involved with a particular request, except upon notice and opportunity for all parties to participate; use or rely upon any communication, report, staff memorandum, or other material prepared in connection with the particular case, unless it is made a part of the record. The Zoning Examiner may inspect the site provided all parties are given an opportunity to be present.

- D. *Zoning Examiner's Preliminary Recommendation.* The Zoning Examiner shall issue a report with preliminary findings and a preliminary recommendation within five (5) days of the close of a hearing. The preliminary recommendation shall be provided to the applicant, the DSD Director and to any person who has requested a copy of the preliminary recommendation.
- E. *Reconsideration.* Any party of record may request that the preliminary recommendation be reconsidered or that the public hearing be reopened if there are errors of fact or procedure. The request shall state the alleged errors of fact or procedure and shall be submitted to the Zoning Examiner within five (5) days of the date of the preliminary recommendation. The Zoning Examiner has five (5) days following the receipt of a request for reconsideration to take action on the request which may include revising the preliminary recommendation, reopening the public hearing or denial of the request.
- F. *Final Recommendation.* Within fourteen (14) days following the close of the public hearing or the reopened public hearing, the Zoning Examiner shall issue and transmit a final recommendation to the Mayor and Council for final action. If the Zoning Examiner determines that minor corrections to the preliminary recommendation are appropriate in response to a request for reconsideration, such corrections may be incorporated into the final recommendation without further proceedings. The final recommendation shall not be subject to further requests for reconsideration. If the Zoning Examiner determines that a significant change to the preliminary recommendation is appropriate, the public hearing shall be reopened with notice provided to all persons who received the previous preliminary recommendation.
- G. *Reopening of the public hearing.* If the public hearing is reopened, the new hearing shall be held within forty (40) days of the close of the last public hearing. Notice of the reopened hearing shall be the same as the notice for the original public hearing. If the public hearing is reopened at the request of a party or to consider new information from a party, the Zoning Examiner may require that the party pay the costs for the re-opened public hearing. At the conclusion of the reopened hearing, the issuance of a preliminary recommendation, the time period for reconsideration, the issuance of a final recommendation and the time periods for each shall be the same as for the original hearing.
- H. *Mayor and Council Public Hearing Request.* Any person may request that the application be heard at a public hearing before the Mayor and Council if the request is filed with the City Clerk within fourteen (14) days after the date of the Zoning Examiner's public hearing or re-opened public hearing. The time for this request shall not be extended by the filing of a request for reconsideration. If a public hearing is requested, notice shall be provided in the same manner as the notice provided for the Zoning Examiner's public hearing.

5.4.3.3 Authorization for Change of Zoning. Where a change in zoning is requested based upon conceptual plans, the Mayor and Council make a preliminary determination to authorize the applicant to proceed with the case.

- A. *Authorization for the application to Proceed.* A vote by the Mayor and Council to authorize a change of zoning case constitutes authorization for the applicant to proceed, subject to the applicant's subsequent demonstration of compliance with any special conditions that may be established by the Mayor and Council. Unless the Mayor and Council states a shorter time period, the applicant has five (5) years from the date the request is authorized to complete all conditions of approval.

B. *Discretion of the Mayor and Council.* An authorization for a change of zoning is preliminary and does not in any way limit the legislative discretion of the Mayor and Council to determine whether or not to adopt a change of zoning ordinance or to add conditions thereto at the time an ordinance is presented for adoption. Authorization does not establish any vested right to the authorized zoning prior to ordinance adoption.

5.4.3.4 Direct Ordinance Adoption. Where a change of zoning application includes development plan or proposed plat that provides sufficient specific details to demonstrate compliance with all conditions that may be required by the Mayor and Council and is in compliance with Development Standard 1-07, the application may proceed from staff review to Mayor and Council ordinance adoption without a separate Mayor and Council authorization to proceed with the application.

5.4.3.5 Mayor and Council Decision. The Mayor and Council shall consider the change of zoning application, the Zoning Examiner's recommendation and the City Manager's recommendation in a public meeting or a public hearing. Mayor and Council may authorize the case to proceed, modify, delete or add to the proposed conditions for approval, remand the case to the Zoning Examiner for further proceedings, adopt an ordinance changing the zoning, deny the application or take other appropriate action.

If Davis Monthan Air Force Base submits comments to the City on any application concerning the compatibility of the proposed rezoning with the high noise, accident potential zone or approach-departure corridor that may have an adverse impact on the operation of the base or upon public health and safety, a public hearing shall be held to consider these and other comments.

5.4.3.6 Mayor and Council Adoption of the Change of Zoning. Where an application substantially demonstrates compliance with the conditions for a change of zoning in accordance with paragraph C or D above and paragraph E above, staff shall prepare an ordinance to be submitted to the Mayor and Council for adoption enacting the change in zoning.

5.4.3.7 Voting Requirements. Adoption of a change of zoning shall be by a vote of three-fourths (3/4) of all members of the governing body if there are written protests filed by property owners who own twenty percent (20%) or more of the area within one of the following areas.

A. The entire area of the lot or lots within the subject site.

B. Property in any one (1) of the following quadrants: north, south, east, west, that is located within one hundred fifty (150) feet of the rezoning site, excluding public right of way abutting the subject site.

5.4.3.8 Ordinance Effective Date. Ordinances granting changes in zoning are subject to referendum and shall not become effective until thirty (30) days after the date of adoption or the date the final ordinance is available from the City Clerk, whichever is later. The effective date of the ordinance is not necessarily the effective date of the change of the zoning (rezoning). The effective date of the change of zoning is when compliance with conditions of approval is completed and certified by the DSD Director.

5.4.3.9 Reconsideration. A member of the Mayor and Council may request the reconsideration of an authorization decision or decision on a proposed ordinance provided the vote to reconsider is made within thirty (30) days of the date of decision. A reconsideration will be scheduled upon a majority vote in favor of the reconsideration. If the reconsideration occurs after the time when the decision is initially made, then public notice of the reconsideration shall be given in the same manner as for the initial decision.

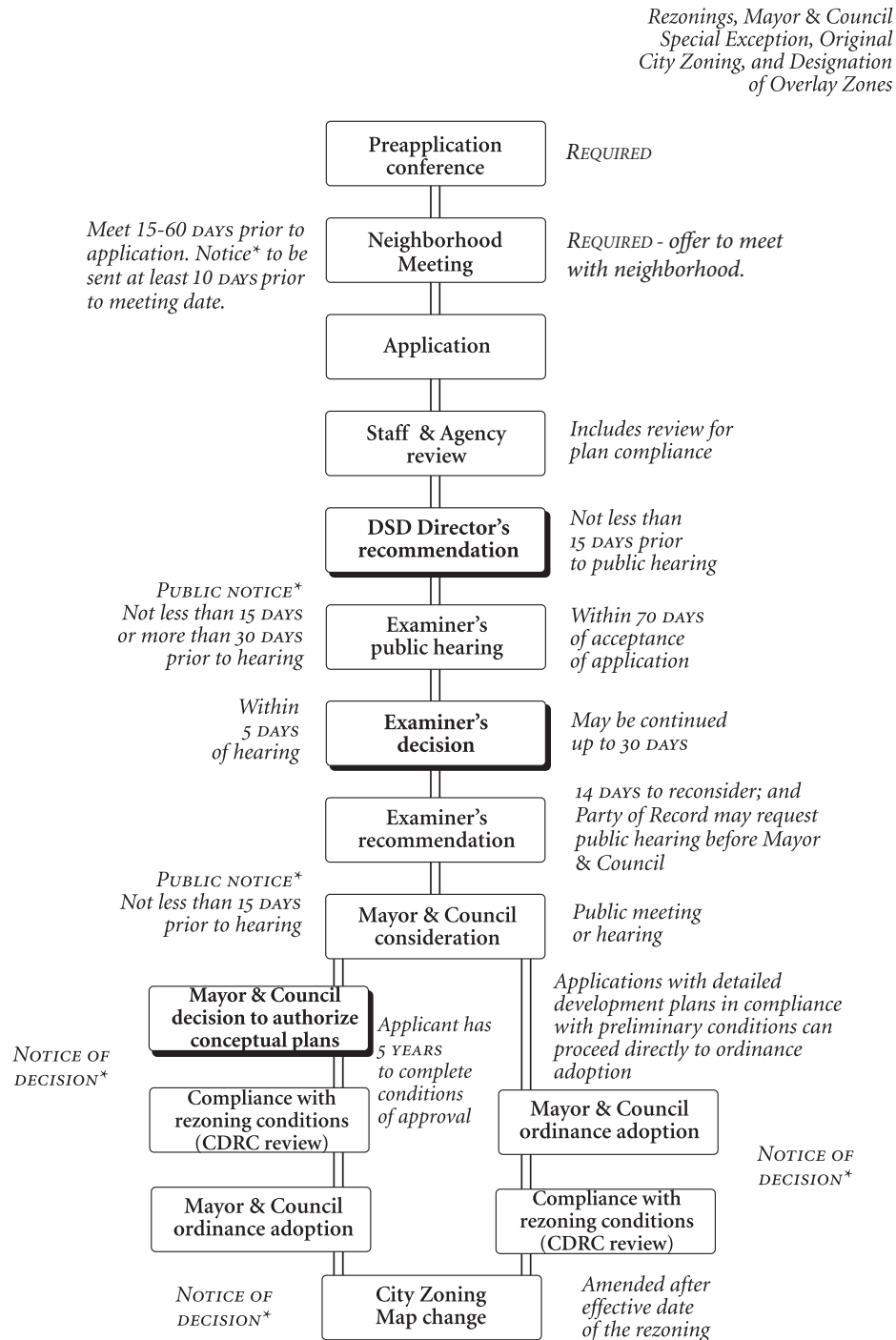
5.4.3.10 Change in Conditions of Approval. An applicant may request a change to conditions of approval which shall be considered as follows.

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- A. *Substantial Change to Conditions or the Preliminary Development Plan.* A request to substantially amend the conditions of approval or the approved preliminary development plan requires Mayor and Council approval after a public hearing. Notice of such hearing shall be given in the same manner as for the procedure adopting the conditions. The same voting requirements as for the original adoption shall apply to the request for a substantial change of conditions.
 - B. *Minor Change to Conditions.* Minor amendments to conditions of approval may be considered by the Mayor and Council in a public meeting.
 - C. *Minor Change to a Preliminary Development Plan.* Minor amendments to a preliminary development plan approved by the Mayor and Council are considered changes to conditions of approval that may be granted by the DSD Director.
 - D. *Change of Conditions of a Planned Area Development.* Changes to conditions and terms of a Planned area development which affect the overall density, intensity and classifications of land uses shall be processed as a new change of zoning. Changes to other conditions of a Planned Area Development shall be in accordance with Sec. 5.4.3.J.1, 2 and 3 above. *LUC* requirements which apply to a PAD may be modified in accordance with the administrative procedures in Development Compliance Code, Chapter 23A .

5.4.3.11 Extension of Time. On applications where there is a specified period of time within which to complete all conditions of approval, a time extension may be requested. If the time period lapses, the case is closed. A closed case may be reactivated only by the Mayor and Council after a public hearing on the reactivation of the case. A new public hearing is required on any request that would extend the time more than five (5) years from the date of the last public hearing. New notice for this public hearing shall be provided in the same manner as the Zoning Examiner hearing and there shall be a new calculation of the protests/approvals. No extension beyond ten (10) years from the original date of approval shall be allowed. Where an ordinance has been adopted, the last public hearing before the ten (10) year limitation shall provide for the repeal of the adopted ordinance if the conditions are not completed prior to the expiration of the ten (10) year period.

5.4.3.12 Completion and Certification. A procedure is deemed complete and final when the conditions of approval are verified as complete by the DSD Director. The conditions may include, but are not limited to, zoning compliance certificate issuance upon a site inspection, the recording of legal documents, and the issuance of a building permit. When completion of the conditions has been verified the DSD Director shall certify completion of the conditions and the zoning on the property shall be changed in accordance with the adopted ordinance.

(Ord. No. 9967, §5, 7/1/04)



* All notices are to be sent to property owners within 300 feet of site and neighborhood associations within 1 mile.

SEC 5.4.3 ZONING EXAMINER PROCEDURE

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